

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES CRUZ,	:	CIVIL ACTION NO. 1:07-CV-0319
	:	
Petitioner	:	(Judge Conner)
	:	
v.	:	
	:	
JONATHAN C. MINER and	:	
UNITED STATES MARSHALS,	:	
	:	
Respondents	:	

ORDER

AND NOW, this 3rd day of July, 2007, upon consideration of petitioner's motion for evidentiary hearing (Doc. 8), and the report of the magistrate judge (Doc. 11), to which petitioner has filed objections (Doc. 12), recommending that the petition for writ of habeas corpus (Doc. 1) be dismissed, and, following an independent review of the record, it appearing that the petition was filed pursuant to 28 U.S.C. § 2241 and challenges a conviction and sentence imposed by the United States District Court for the District of Maine, that petitioner may challenge the validity of his conviction and sentence through a § 2255 motion in the district of sentencing pursuant to 28 U.S.C. § 2255, see id. ("A prisoner in custody under sentence of a [district] court . . . claiming . . . that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence."), and the court finding that petitioner has not demonstrated that the remedies available to him in a

§ 2255 motion are inadequate or ineffective, see id. (“An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained [by a court other than the sentencing court] . . . unless it . . . appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.”); Cradle v. United States, 290 F.3d 536, 539 (3d Cir. 2002) (“Section 2255 is not inadequate or ineffective merely because the sentencing court does not grant relief, the one-year statute of limitations has expired, or the petitioner is unable to meet the stringent gatekeeping requirements of the amended § 2255.”), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 11) is ADOPTED.
2. The motion for evidentiary hearing (Doc. 8) is DENIED.
3. The petition for writ of habeas corpus (Doc. 1) is DISMISSED.
4. A certificate of appealability is DENIED. See 28 U.S.C. § 2253.
5. The Clerk of Court is directed to CLOSE this case.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge